

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

| | | |
|-----------------------------|---|-------------------------------------|
| MUWSA GREEN, | : | CIVIL ACTION NO. 1:12-CV-321 |
| Plaintiff | : | |
| | : | (Judge Conner) |
| v. | : | |
| | : | |
| JOSEPH NISH, et al., | : | |
| Defendant | : | |

ORDER

AND NOW, this 13th day of September, 2012, upon consideration of the Report and Recommendation of United States Magistrate Judge J. Andrew Smyser (Doc. 39), recommending that defendants' motion to dismiss (Doc. 22) the amended complaint be granted in part and denied in part, and, following an independent review of the record and noting that plaintiff filed objections¹ to the report on September 5, 2012 (Doc. 40), and the court finding Judge Smyser's analysis to be thorough and well-reasoned, and the court finding plaintiff's objections to be without merit and squarely addressed by Judge Smyser's report (Doc. 39), it is hereby ORDERED that:

¹ Where objections to a magistrate judge's report and recommendation are filed, the court must perform a *de novo* review of the contested portions of the report. Supinski v. United Parcel Serv., Civ. A. No. 06-0793, 2009 WL 113796, at *3 (M.D. Pa. Jan. 16, 2009) (citing Sample v. Diecks, 885 F.2d 1099, 1106 n. 3 (3d Cir. 1989); 28 U.S.C. § 636(b)(1)(c)). "In this regard, Local Rule of Court 72.3 requires 'written objections which . . . specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for those objections.'" Id. (citing Shields v. Astrue, Civ. A. No. 07-417, 2008 WL 4186951, at *6 (M.D. Pa. Sept. 8, 2008)).

1. Plaintiff's "supplement" complaint (Doc. 41) is STRICKEN from the record without prejudice. With the remand of this matter, the Honorable Magistrate Judge shall address any further requests for leave to amend which are properly supported in accordance with the rules of court. See Doc. 38.²
2. The Report and Recommendation of Magistrate Judge Smyser (Doc. 39) are ADOPTED.
3. Defendants' motion to dismiss (Doc. 22) the amended complaint is GRANTED in part and DENIED in part.
 - a. The claims against defendants for damages in their official capacities are DISMISSED.
 - b. The due process and access-to-the-courts claims are DISMISSED.
 - c. The First Amendment claim is NOT DISMISSED.
4. The above-captioned case is REMANDED to Magistrate Judge Carlson for further proceedings.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

²This order (Doc. 38) disposes of the last pending motion for leave to amend (Doc. 28). The court notes that although the order refers to Doc. 22, it clearly intends to dispose of Doc. 28 based upon the date associated with the motion for leave to amend (May 21, 2012).